

# **Merger 01**

## **Roles and Responsibilities**

**(Final Version 1.03.06)**

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## **Background & Purpose**

In July 2004, the Interagency Leadership Team (ILT) was formed to increase and enhance communication, understanding, and collaboration among the many agencies involved in the delivery of North Carolina's transportation program. The ILT is comprised of executive leadership from the following organizations:

- North Carolina Department of Transportation;
- North Carolina Department of the Environment and Natural Resources;
- North Carolina Department of Commerce;
- North Carolina Department of Cultural Resources;
- North Carolina Wildlife Resource Commission;
- U.S. Army Corps of Engineers;
- Federal Highway Administration;
- U.S. Fish and Wildlife Service;
- U.S. Environmental Protection Agency; and
- NOAA-Fisheries.

The ILT has adopted the following as its mission and goals to pursue:

### **Mission:**

To develop and implement an interagency leadership plan for North Carolina to balance successfully mobility, natural and cultural resource protection, community values, and economic vitality at the confluence of our missions.

### **Goals:**

1. Develop a Comprehensive Shared GIS Database
2. Establish Early Involvement in Systems Planning
3. Continue to Improve the NEPA/Section 404 Merger 01 Process

As part of Goal #3, Improve the Merger 01 process, the ILT recognizes that the Merger 01 process has great potential to improve project delivery and provide excellent stewardship of our state's environmental and human resources. Much progress has already been made, but the ILT believes there is room for continuous improvement. A specific area is the roles and responsibilities of Merger 01 participants.

In order to achieve the greatest efficiency and effectiveness, the ILT believed that guidance was needed to provide participants of the Merger 01 process with an understanding of the roles, responsibilities, relationships, rules, and expectations needed to operate in Merger 01 process. To this end, the ILT chartered an interagency team to develop Roles & Responsibilities (R&R) for Merger 01 participants.

### **R&R Team Mission Statement:**

"Improve the efficiency of Merger 01 project team meetings".

### **R&R Team Objective:**

"Develop a standard operating procedures or similar type document that defines and describes the roles and responsibilities of Merger Process participants. This document should establish the expectations or norms for operating the Merger Process. Specific topics to be addressed included:

- Roles and responsibilities of participants at different phases of the Merger Process;
- Work standards and expectations (rules) for each phase of the Merger process;
- Conduct and relationships among participants (e.g. respecting an agency's expertise); and
- Detailed steps and time frames for elevating issues, disputes, or non-concurrence within a Merger Project Team meeting.

**R&R Team Members:**

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 Debbie Barbour, NCDOT  
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**The output of the R&R Team is this document. It has been reviewed and endorsed by the ILT for use in the Merger 01 process.**

## **Roles**

### **Agency Roles**

Agency Roles define high-level responsibilities. Agency Roles can differ depending upon the nature of the federal involvement.

#### **Federal Lead Agency**

The Federal Lead Agency is the agency preparing or having taken primary responsibility for preparing the environmental document. Where federal-aid funding is anticipated, the U.S. Department of Transportation (FHWA) shall be the Federal lead agency in the environmental review process for a project. Where no federal-aid funding is anticipated, the USACE will normally be the lead agency.

#### **Joint Lead Agency**

More than one agency can be a “Joint Lead Agency”. Any project sponsor that is a State or local governmental entity receiving funds under Title 23 US Code or chapter 53 of Title 49 US Code for the project shall serve as a joint lead agency with the USDOT for purposes of preparing any environmental document under the National Environmental Policy Act of 1969 and may prepare any such environmental document required in support of any action or approval by the Secretary if the Federal lead agency furnishes guidance in such preparation and independently evaluates such document and the document is approved and adopted by the Secretary prior to the Secretary taking any subsequent action or making any approval based on such document, whether or not the Secretary's action or approval results in Federal funding.

#### **Cooperating Agency**

"Cooperating agency" means any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment.

#### **Federal Participating Agency**

“Federal Participating Agency” means any Federal agency (other than a lead agency) which has jurisdiction or authority with respect to the project, has expertise or information relevant to the project, and intends to submit comments on the project.

#### **Non-Federal Participating Agency**

“Non-Federal Participating Agency” means any agency (other than a joint lead agency) which has jurisdiction or authority with respect to the project, has expertise or information relevant to the project, and intends to submit comments on the project.

### **Merger 01 Roles**

#### **Primary MOU Signatory Agencies**

The agencies identified as primary signatories are responsible for the successful implementation of the Merger 01 process.

## **Partnering MOU Signatory Agencies**

The agencies identified as partnering signatories participate in the Merger 01 process.

## **Project Team Roles**

### **Project Team Leader Roles**

- The USACE, NCDENR, NCDOT and FHWA (when applicable) Project Team Members jointly lead the Project Team.
- The NCDOT Project Team Member is responsible for administering the elevation process.

### **Chair Roles**

- The USACE Project Team Member serves as the Chair of the Project Team meeting.
- The Chair leads the Project Team meeting.

### **Project Team Member Roles**

- Project Team Members work in a collaborative problem solving spirit.
- Project Team Members will assist NCDOT in satisfying NEPA and Clean Water Act requirements.
- Project Team Members represent their own agency.
- Project Team Members make decisions based on the mission and authority of their agency.
- Project Team Members may either concur or non-concur, or, in exceptional cases, they may abstain.

### **Facilitator (when utilized) Role**

- The Facilitator is a neutral party who provides structure and process to interactions so the Project Team is able to function effectively and make decisions.

### **Recorder Role**

- The Recorder takes minutes of the meeting.

### **Support Staff Roles**

- Support Staff provide information to the team.
- Support Staff do not participate in written concurrence.

## **Decision-making Philosophy**

**Each agency should enter discussion of a concurrence point with a solution-oriented attitude. After sufficient discussion and an opportunity for NCDOT to provide requested information, each agency will either concur or non-concur, or, in exceptional cases, abstain.**

If an organization decides to either non-concur or abstain, that organization is responsible for documenting its reasons in writing and providing that documentation to all Project Team Members within 5 business days of the Project Team meeting. Primary agencies are responsible for reviewing the reasons for abstaining to determine

if the process should move forward. Definitions of concurrence, non-concurrence and abstention are provided below:

- **Concurrence**
  - “I do not object to the proposed action based on the laws and regulations of my program and agency.”
- **Non-concurrence**
  - “I do not concur as the information is not adequate for this stage and/or concurrence could violate the laws and regulations of my program and agency.”
    - Non-concurrence should not be utilized based on lack of information without affording NCDOT a reasonable opportunity to provide the requested information.
- **Abstention**
  - “I do not actively object, but I am not signing the concurrence form. The Merger Process may continue, and I agree not to revisit the concurrence point subject to the guidance on revisiting concurrence points” (documented on page 2 of the Merger MOU).

## **Responsibilities**

### **Pre-Meeting**

#### **Scheduling (Project Team Leaders)**

- Project Team Leaders are responsible for screening projects for use of the Merger Process, as per existing Merger 01 Screening Process.
  - For 4B & 4C meetings, non-Merger projects may be accommodated, but will be noted as “non-merger”.
  - If requests for additional information by Project Team Members are made, the Project Team Leaders are responsible for determining if the information can/will be provided and whether the meeting needs to be postponed or can occur as scheduled.
    - If the information cannot or will not be provided for the next Project Team Meeting, the Project Team Leaders are responsible for notifying the Project Team Member of the reason(s) why the information will not be provided. Such notification will be either in writing or via e-mail and all other Project Team Members will be copied).

#### **Scheduling (NCDOT Team Member)**

- The NCDOT Project Team Member is responsible for consulting with the USACE and FHWA Project Team Members on whether sufficient information exists to warrant scheduling a team meeting.
  - If more than 2 years has passed since the last concurrence meeting, the NCDOT Project Team Member is responsible for checking back with the permitting and resources agencies to determine whether information should be updated before action on the next concurrence point.
  - The NCDOT Project Team Member is responsible for notifying the USACE and FHWA Project Team Members of any new information that

- supercedes packet information that has already been distributed to Project Team Members.
  - For substantial information changes to packets, the NCDOT Project Team Member is responsible for notifying the Project Team as soon as information is known to reschedule meeting or not.
    - The NCDOT Project Team Member will consult with the USACE Project Team Member to determine if the meeting needs to be rescheduled based on new substantive information that is uncovered (between sending package of information and meeting date).
      - The NCDOT Project Team Member will notify the Concurrence Meeting Coordinator to reschedule the meeting if determined necessary.

### **Scheduling (Field Meeting)**

- Project Team Field meetings will be held if deemed necessary by the Project Team Leaders for decision-making and concurrence.
  - The NCDOT Project Team Member is responsible for setting up Project Team Field Meetings.
- Nothing precludes a Project Team Member (or any combination of Project Team Members) from going into the field prior to a Project Team Meeting.
  - Should a Project Team Member request a Project Team Field Meeting and that request be denied by the Project Team Leaders, then appropriate Project Team Leaders will accompany the Project Team Member into the field prior to a Project Team Meeting.

### **Concurrence Daily Agenda**

The Concurrence Daily Agenda is a list of projects to be discussed on a particular day (not to be confused with a Project-Specific Agenda which outlines what is expected to be accomplished during a particular Project Team meeting).

### **Concurrence Daily Agenda (NCDOT Team Member)**

- For CP1 through CP 4A, PDEA is responsible for using Internal NCDOT guidelines for scheduling meetings.
  - The NCDOT Project Team Member is responsible for ensuring that Project Team meetings are scheduled once the request has been made to the PDEA Concurrence Meeting Coordinator.
  - The PDEA Concurrence Meeting Coordinator is responsible for ensuring that meetings are scheduled.
  - The PDEA Concurrence Meeting Coordinator is responsible for distributing the Concurrence Daily Agenda 3 weeks in advance of the meeting date. This will enable Project Team participants to have 3 weeks notice of when their Project Team will meet. The Concurrence Daily Agenda will also be posted on the NCDOT website.
- For CP 4B & 4C, the NCDOT Hydraulics Unit is responsible for scheduling and meeting place (DOT Century Center).



### **Packet (NCDOT Project Team Member)**

- For CP 1 through CP 4A, The NCDOT Project Team Member is responsible for assembling the packet.
  - The NCDOT Project Team Member is responsible for developing the Project-Specific Agenda (what is expected to be accomplished at the meeting) in consultation with the Project Team Leaders.
  - The NCDOT Project Team Member is responsible for including information in the packet pertaining to what should be accomplished at the stage of project to be discussed at the next meeting.
  - The NCDOT Project Team Member is responsible for providing a brief history of the project (including results of any prior concurrence point results) as part of the packet.
  - The NCDOT Project Team Member is responsible for ensuring appropriate “Appendix A” material is included in the packet.
  - The NCDOT Project Team Member is responsible for consulting with the USACE, NCDENR and FHWA Project Team Members if information requests from a previous meeting (if applicable) will not be included in the packet.
- The NCDOT Project Team Member is responsible for providing the packet to the PDEA Concurrence Meeting Coordinator.
- The PDEA Concurrence Meeting Coordinator is responsible for sending out the meeting packets.
  - NCDOT is responsible for providing information in the format (electronic or hard copy) requested by the Project Team Members.
- NCDOT is responsible for ensuring packets are received at least two weeks in advance of meeting.
- For CP 4B & 4C, the Hydraulics Unit Concurrence Meeting Coordinator is responsible for sending out the review materials (roadway plans for 4B, plans/permit drawings/stormwater management plans for 4C) two weeks prior to the meeting.

### **Packet (Project Team Member)**

- Project Team Members must designate a standard format (electronic or hard copy) in which they wish to regularly receive information packets. Project Team Members requesting electronic distribution of packets are responsible for ensuring that they have the capability to receive and print packets distributed to them electronically.

### **Receipt/Review (Project Team Members)**

- Project Team members are responsible for notifying the NCDOT Concurrence Meeting Coordinator with a “cc” to the NCDOT Project Team Member in a timely manner prior to a team meeting if the packet is not received by 2 weeks in advance of the meeting.
- Project Team Members are responsible for reviewing the packet prior to Project Team meetings.
- Project Team Members are responsible for being prepared for Project Team meetings.

- Project Team Members are responsible for forwarding any substantial concerns to the NCDOT Project Team Member either in writing or via e-mail with a copy to other Project Team Members in advance of team meetings.
  - Agency concerns regarding predictive methodology (e.g. traffic projections) should describe the alternative methodology which it prefers and why.
  - An agency objecting to or expressing reservations about the proposal on grounds of environmental impacts shall specify the avoidance and minimization measures considered necessary to allow the agency to grant or approve applicable permit, license, or related requirements or concurrences.
- Project Team Members may request additional information in advance of Project Team meetings. Such requests will be in writing and sent to the NCDOT Project Team Member.
  - Requests for additional information shall be as specific as possible and may address either the adequacy of the Purpose & Need statement or the merits of the alternatives discussed or both.
  - An agency shall specify in its comments whether it needs additional information to fulfill other applicable environmental reviews or consultation requirements and what information it needs. In particular, it shall specify any additional information it needs to comment adequately on the draft statement's analysis of significant, site-specific effects associated with the granting or approving by that cooperating agency of necessary Federal permits, licenses or entitlements.

#### **Participation (Project Team Members)**

- Project Team Members are strongly encouraged to attend meetings on-site. Video-conferencing should be used only as a last resort.
- Should a Project Team Member not be able to attend a team meeting and this is known in advance, the Project Team Member is responsible for notifying NCDOT and will do one of the following:
  - send a substitute, providing the name of the substitute to NCDOT before the meeting; or
  - indicate concurrence in advance in writing; or
  - indicate abstention in advance in writing; or
  - if absent, the Project Team Member will contact the NCDOT Project Team Member within two weeks of their return to get up to speed on the project and make any decisions related to the project.

#### **Participation (NCDOT & USACE Project Team Members)**

- If the NCDOT and/or the USACE Project Team Members are not able to attend and do not have a prepared substitute, then the Project Team meeting shall be postponed.

#### **Participation (NCDOT Project Team Member)**

- The NCDOT Project Team Member is responsible for ensuring that he/she understands the details of what will be discussed at meetings in advance and will inform and involve appropriate staff members at the Project Team meetings to

ensure that technical issues (e.g. safety, feasibility of construction, etc.) can be addressed.

- The NCDOT Project Team Member is responsible for specifically inviting Hydraulics engineers to field meeting and all concurrence meetings.
- The NCDOT Project Team Member up until CP 4A will attend CP 4B & 4C meetings.
- The NCDOT (after consulting with the USACE Project Team Member) is responsible for making the decision to postpone the meeting.
- The NCDOT Project Team Member is responsible for notifying the Concurrence Meeting Coordinator of a meeting postponement.
- The Concurrence Meeting Coordinator is responsible for notifying Project Team Members of a meeting postponement through the normal e-mail process.

#### **General (NCDOT Project Team Member)**

- NCDOT is responsible for providing facilitators for large, complex or controversial projects.
- The NCDOT Project Team Member is responsible for reviewing information to be presented and ensuring that material can be easily viewed by all Project Team Members.
- The NCDOT Project Team Member is responsible for maintaining an up-to-date list of Project Team Members.
  - The NCDOT Project Team Member is responsible for notifying the PDEA Concurrence Meeting Coordinator when Project Team Member information changes.
  - PDEA is responsible for keeping mailing lists for Project Team participants updated on a specified basis by project and ensuring this information is made available on web.

#### **General (Project Team Members)**

- Agencies are responsible for notifying the NCDOT Concurrence Meeting Coordinator (with a “cc” to the NCDOT Project Team Member) of any changes in their agency’s Project Team membership.
- Project Team Members are responsible for notifying the Project Team Leaders in writing when participation is no longer desired and/or warranted.

### **During Meeting**

#### **NCDOT Project Team Member**

- The purpose and objective of the meeting will be clearly stated by the NCDOT Project Team Member on the agenda sheet. This information is provided to the Concurrence Meeting Coordinator by the NCDOT Project Team Member prior to distribution of the meeting agendas. Informational meetings are acceptable and will be noted as such on the agenda.
- The NCDOT Project Team Member is responsible for appointing a timekeeper to ensure participants are aware of remaining time.
- The NCDOT Project Team Member is responsible for bringing copies of NEPA documents to project team meetings.

- The NCDOT Project Team Member is responsible for ensuring that technical information is presented in a clear manner.
  - Such information will be easy to understand and easy to view by all Project Team Members.
- At the conclusion of each project team meeting, the NCDOT Project Team Member is responsible for informing the Project Team of the tentative schedule for the next steps/concurrence point.
- If the “Agency’s preferred alternative” is FHWA’s or NCDOT’s only choice, the FHWA Project Team Member or NCDOT Project Team Member is responsible for explaining why.
- The NCDOT Hydraulics Engineer responsible for CP 4B & 4C is responsible for adding the NCDOT PDEA Project Team Member from CP1 through CP4A to the CP 4b & 4C meeting distribution lists, and providing the PDEA Project Team Member with hydraulic review (4B/4C) information packets prior to the 4B & 4C meetings.
- The NCDOT Project Team Member is responsible for taking notes and preparing meeting minutes.

### **USACE Project Team Member**

- The USACE Project Team Member is responsible for chairing the meeting.
  - The Chair is responsible for starting meetings on time.
  - The Chair is responsible for playing an active role to promote participation.
  - The Chair is responsible for managing the discussion to keep focus.
  - The Chair is responsible for leading the team through the agenda.
  - The Chair is responsible for ensuring that non-agenda discussions are placed in a “parking lot”.
- At the conclusion of each Project Team meeting, the Chair is responsible for summarizing next steps (i.e., additional information needed for concurrence or next concurrence point).

### **Project Team Members**

- Agencies are responsible for ensuring meeting attendance.
  - Project Team Members are responsible for arriving on time to project team meetings.
  - Project Team Members are responsible for bringing their information packets with them to the meeting.
- Merger participants will abide by the Code of Conduct.
- Project Team Members will be responsible for ensuring they are empowered to represent their agencies and make decisions.
  - Project Team Members are responsible for making decision based on their agency’s authorities.
- Project Team Members are responsible for not revisiting concurrence point decisions unless new, substantial information is brought to light.
- Project Team Members are responsible for identifying concerns regarding predictive methodology (e.g. traffic projections) and describe the alternative methodology preferred and why.
- Project Team Members who object to or express reservations about the proposal on grounds of environmental impacts shall specify the avoidance and

- minimization measures considered necessary to allow the agency to grant or approve applicable permit, license, or related requirements or concurrences.
- Project Team Members may request additional information in advance of Project Team Meetings if the information being provided in accordance with Appendix A of the Merger 01 Guidance is insufficient. Such requests will be in writing.
  - Requests for additional information shall be as specific as possible and may address either the adequacy of the statement or the merits of the alternatives discussed or both, and shall explain why the information provided in accordance with Appendix A is insufficient.
  - An agency shall specify in its comments whether it needs additional information to fulfill other applicable environmental reviews or consultation requirements and what information it needs. In particular, it shall specify any additional information it needs to comment adequately on the draft statement's analysis of significant site-specific effects associated with the granting or approving by that cooperating agency of necessary Federal permits, licenses, or entitlements.
- If an organization decides to either non-concur or abstain, that organization will indicate such by a statement on the concurrence form, and will sign the statement. The organization is responsible for documenting its reasons in writing provide it to all Project Team Members within 5 business days of the Project Team meeting. Primary agencies are responsible for reviewing the reasons for abstaining to determine if the process should move forward.

### **Project Team Leaders**

- The Project Team Leaders are responsible for determining how to address/resolve “parking lot” issues.

## **Post Meeting**

### **Concurrence**

- The NCDOT Project Team Member will pursue signing of the concurrence from Project Team members who did not attend the concurrence meeting but indicated intent to concur.
- Project Team Members who do not attend concurrence meetings, but indicated intent to concur, will provide written concurrence to the NCDOT Project Team Member.

### **Non-concurrence**

- **TBD by ILT**

## **General**

- NCDOT is responsible for providing a summary of public input comments as soon as possible to team members.
- Once comments at CP 4B are addressed, the Hydraulics Unit can move forward and design towards CP 4C.
- NCDOT and USFWS, NMFS and SHPO are responsible for keeping the USACE informed of Section 7 and Section 106 issues (furnish copy of Section 7 and Section 106 correspondence to USACE, provide USACE opportunity to attend meetings to discuss Section 7 issues, etc.).

- Merger participants are responsible for ensuring that all experts are included in the appropriate step(s) in the process.
- The USACE is responsible for providing “leading meeting” training to its project team members (considering cost and availability).
- The Project Team Resource agencies are responsible for explaining and justifying requested project changes based on their NEPA requirements and agency permitting/reviewing authorities. NCDOT is responsible for quantifying the cost associated with requested project changes.
- The Project Team is responsible for focusing on limiting alternatives while ensuring a “reasonable” range of alternatives.
- Elevation is appropriate when the team cannot concur.
- The elevation process will begin in a timely manner.
- Any Project Team Member can elevate.